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NEW LAW ESTABLISHES ENVIRONMENTAL CONSERVATION RIGHT IN CHILE

On June 25th, 2016, Law No. 20,930 that establishes the environmental conservation right was published in the Official Gazette. The purpose of this law is to create a mechanism to simplify and promote the participation of private parties in the conservation of the environment, as a complement to the work done by the State in these matters.

This right has its origin in Comparative Law. The United States of America includes within its legislation the conservation easement as a voluntary mechanism that allows a land owner to destine a piece of land for conservation, without losing its property. Likewise, in 1992, Costa Rica included in its legislation a similar figure and by now, there are more than three thousand hectares of private property that are protected through this mechanism.

Law No. 20,930 defines the environmental conservation right as *"a right that consists in the aptitude for preserving the environmental heritage of a land or its attributes and characteristics", and underlines that it shall be constituted "by a voluntary decision of the owner of the land" in benefit of a specific person or legal entity".*

This environmental conservation right may have as a titleholder any public/private person or legal entity, that differs from the original owner.

The way this right is constituted is by means of a contract, by public deed, signed by the land owner and the new titleholder. According to the law, this contract must, at least, have one of the following conditions:

1. Forbiddance or restriction to destine the land to real estate business, commerce, tourism, industry, and other purposes.
2. Obligation to assume or hire maintenance, decontamination, repair and administrative or other services destined to the rational use of the land.
3. Obligation to execute and supervise the management plan established in the contract for the proper and rational use of the natural resources of the land.

Interested Parties

This right takes an interest for every third party that desires to promote conservation actions towards the environmental heritage, such as **(i)** the owner of the land of the contract and/or **(ii)** the new titleholder, for the development of preservation activities.



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

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¹ This means that the State or third parties cannot establish this right, as it may occur, for example, with easement constitutions.

This law refers to the definitions established in Law No. 19,300, on General Bases of the Environment. Considering that the concept of “*environment*” has an extended regulation notion, including environmental, social and cultural concepts, it’s natural to consider that this new mechanism is an opportunity for those who desire to implement preservation projects with relevant heritage consideration.

However, it’s important to consider that the protection given to the land within the contract is limited. Furthermore, this law indicates that **(i)** it is illegal for the owner of the land to stop, harm and obstruct the environment conservation right and **(ii)** this right will be considered as a first priority in comparison to other rights that have been agreed upon the land, afterwards¹.

It is also important to bear in mind that the economic benefits obtained from this right must be standardized. Indeed, Law No. 20,930 establishes that this right does not allow its titleholder to receive the natural or civil products/results from the maintenance of the land, unless the parties decide it and settle it in the contract.

Concerning the Environmental Impact Assessment System (SEIA)², nowadays, lands affected by this right, will not be considered as a protected area, which from a legal point of view, has important and relevant implications.

Neither was expected that the environmental authority would consider it so, because this right does not fulfill with the conditions to be considered as a protected area, particularly as to be determined under “*official protection*” by means of an “*act issued by the authority*”³.

¹ On the other hand, rights that have been convened in the land, before the environment conservation right, will prefer.

² Concerning the discussions made by the legislative authority, the former Minister of the Environmental Department, Mrs. María Ignacia Benítez, specified that this new mechanism wouldn't have any effects in the Environmental Impact Assessment system, because this right is a consequence of a private agreement between the parties involved and doesn't belong to a public matter placed under official protection.

³ Art. 8, inc.5, D.S. 40 states “protected areas shall be understood as any territory, geographically defined and established by an administrative act from the competent authority, placed under official protection, with the purpose of ensuring the biological diversity, the protection the nature and its preservation or the environmental heritage”.